

STATE OF MICHIGAN  
COURT OF APPEALS

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DR. LEE C. LANEY, JR., and KIM LANEY,

Plaintiffs-Appellants,

v

BLUE CROSS BLUE SHIELD OF MICHIGAN  
and DOUGLAS CEDRAS,

Defendants-Appellees.

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UNPUBLISHED

March 11, 2003

No. 236977

Wayne Circuit Court

LC No. 99-934539-NZ

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition and dismissing plaintiffs' complaint. We affirm.

Plaintiffs' first issue on appeal is that plaintiff Dr. Lee Laney's arrest and custody constituted false arrest/false imprisonment<sup>1</sup> or, at least, a question of fact exists on the claim. We disagree.

A trial court's determination of a motion for summary disposition is reviewed de novo on appeal. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in a light most favorable to the nonmoving party. *Quinto v*

<sup>1</sup> "False arrest and false imprisonment are often used interchangeably, Prosser, Torts (4th ed), § 11, p 42, although there is technically a difference between the two actions. . . . 'False arrest and false imprisonment as causes of action are said to be distinguishable only in terminology. The difference between them lies in the manner in which they arise. It is not necessary, to commit false imprisonment, either to intend to make an arrest or actually to make an arrest. However, a person who is falsely arrested is at the same time falsely imprisoned, and an unlawful arrest may give rise to a cause of action for either false arrest or false imprisonment. Thus, it has been stated that false arrest and false imprisonment are not separate torts, and that a false arrest is one way to commit false imprisonment; since an arrest involves a restraint, it always involves imprisonment.'" *Lewis v Farmer Jack, Inc*, 415 Mich 212, 218; 327 NW2d 893 (1982) (Williams, J., dissent), quoting 32 Am Jur 2d, False Imprisonment, § 2, pp 59-60, citing 35 CJS, False Imprisonment, § 2, p 624.

*Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). This Court may grant a motion for summary disposition pursuant to MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Scott v Harper Recreation*, 444 Mich 441, 448; 506 NW2d 857 (1993); *Krass v Tri-County Security, Inc*, 233 Mich App 661, 684 n 14; 593 NW2d 578 (1999).

False imprisonment has been defined by this court as an unlawful restraint on a person's liberty or freedom of movement. *Clark v K-Mart Corp*, 197 Mich App 541, 546; 495 NW2d 820 (1992). A false arrest is an illegal or unjustified arrest, and the guilt or innocence of the person arrested is irrelevant. *Lewis v Farmer Jack, Inc*, 415 Mich 212, 218; 327 NW2d 893 (1982). To prevail on a claim of false arrest or false imprisonment, a plaintiff must show that the arrest was not legal, i.e., the arrest was not based on probable cause. *Lewis, supra*, 415 Mich 218; *Burns v Olde Discount Corp*, 212 Mich App 576, 581; 538 NW2d 686 (1995); *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). Whether the plaintiff could actually have been convicted is irrelevant because actual innocence is not an element of false arrest. *Lewis, supra*, 415 Mich 218 n 1; *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984). The Court, in *Lewis* explained the general rule and its limitations:

[I]t must be a false arrest, *made without legal authority*. One who instigates or participates in a lawful arrest, as for example an arrest made under a properly issued warrant by an officer charged with the duty of enforcing it, may become liable for malicious prosecution, as stated in Chapter 29, or for abuse of process, as stated in Chapter 31, but he is not liable for false imprisonment, since no false imprisonment has occurred." [*Lewis, supra*, 415 Mich 218 n 2, quoting 1 Restatement Torts, 2d, § 45A, p 69, Comment b.]

There is no dispute that plaintiff Dr. Laney, after turning himself in, was arrested and held by the Warren Police Department. Plaintiffs argue on appeal that defendants knowingly, intentionally, and without probable cause, instigated the City of Warren Police Department and compelled plaintiff Dr. Laney to be arrested. Where the facts are undisputed, the determination whether probable cause exists is a question of law for the court to decide. *Matthews v Blue Cross Blue Shield of Michigan*, 456 Mich 365, 381-382; 572 NW2d 603 (1998); *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 615; 396 NW2d 809 (1986). In this case, the facts regarding the circumstances leading to the arrest were virtually undisputed. Investigator Cheryl Dawson, while working undercover investigating an alleged fraud scheme by Paul Smith and Gregory Smith, received information and a referral from Paul Smith that implicated plaintiff Dr. Laney. A bill was submitted to defendant Blue Cross, and plaintiff Dr. Laney received payment for an abdominal echogram that was not rendered. Plaintiffs argue that a question of fact exists because there was very little information from Investigator Dawson's investigation, because Macomb County Prosecutor Eric Kaiser does not recall whether he was informed that a third party biller was involved, because Constance Bruni testified that she did not think plaintiff Dr. Laney would intentionally submit a false claim, and because Diane Bradford testified that, in twenty years, plaintiff Dr. Laney has never been in any trouble with the authorities. The only possible disputed fact surrounding the finding of probable cause would be whether Prosecutor Kaiser was informed that a third party biller submitted the claim. However, Prosecutor Kaiser testified that he did not know if he was told that a third party biller was used, and that it was not

“crucial” to his determination. Furthermore, a false claim can still be submitted through a third party biller. Accordingly, none of these alleged factual disputes creates a factual question regarding whether probable cause existed. Because no factual dispute existed, it was proper for the trial court to determine whether probable cause existed.

Probable cause that a particular person has committed a crime "is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense . . . ." *People v Coutu*, 235 Mich App 695, 708; 599 NW2d 556 (1999), quoting *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). There was no error in the trial court's conclusion that probable cause existed to arrest plaintiff Dr. Laney. From the perspective of a reasonably cautious person, the fact that plaintiff Dr. Laney was specifically implicated by Paul Smith and the fact defendant Blue Cross was billed for a service that was not rendered by plaintiff Dr. Laney seems to be sufficient evidence for purposes of probable cause to believe that plaintiff Dr. Laney was involved in a conspiracy with the Smith brothers and had submitted a fraudulent claim to defendant Blue Cross.

As discussed herein, defendants had probable cause to believe plaintiff had committed a crime and acted reasonably when submitting information to the prosecutor. The undisputed facts establish that plaintiff Dr. Laney's arrest was legal based on probable cause. Furthermore, there is no evidence on the record that defendants directed or persuaded anyone to arrest plaintiff Dr. Laney. To the contrary, the testimony of Prosecutor Kaiser, who issued the warrants, was that he decided to charge plaintiff Dr. Laney based on an oral recitation he received from FBI Agent Nina Burnett and a version of the facts of the case presented by Agent Burnett, Detective Byrne, and defendant Cedras. Prosecutor Kaiser testified that defendant Cedras never recommended that he charge anybody in the case, and defendant Cedras' only involvement was to answer questions. Plaintiff Dr. Laney has failed to provide specific facts supporting a conclusion that there was not probable cause for his arrest. Thus, there was no genuine issue of material fact regarding plaintiff Dr. Laney's claim of false imprisonment/false arrest. Furthermore, plaintiff Dr. Laney's arrest was not illegal and summary disposition was appropriate. *Lewis, supra*, 415 Mich 218.

Plaintiffs' second issue on appeal is that trial court erred in granting summary disposition and dismissing plaintiff Dr. Laney's claim of malicious prosecution because plaintiff Dr. Laney was subject to malicious prosecution and *Matthews, supra*, is not controlling authority. We disagree.

In a malicious prosecution action, the plaintiff has the difficult burden of proving four elements: "(1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice." *Matthews, supra*, 456 Mich 365.

*Matthews, supra*, provides guidance regarding whether plaintiff has stated a claim for malicious prosecution. In *Matthews, supra*, 456 Mich 357-378, a dentist was charged, tried, and acquitted of charges of filing false health care claims and false pretenses with intent to defraud. After his acquittal, the dentist brought an action for malicious prosecution against the insurance

company alleging that the agents of the insurance company provided inaccurate information to the prosecutor. *Id.* at 376. The *Matthews* Court noted that, in order for the dentist to sustain a prima facie case of malicious prosecution, against the insurance company, the dentist had to prove that the insurance company instituted or maintained the prosecution against him. *Id.* at 379. The *Matthews* Court concluded that the dentist failed to prove this element of malicious prosecution because the prosecutor, not the insurance company's agents, initiated, and maintained the prosecution against the dentist. *Id.* at 383-384. Specifically, the *Matthews* Court determined that the prosecution resulted from an investigation by a state detective and a warrant that was authorized by the prosecutor, in which the detective was the complainant. *Id.* Thus, the prosecutor, not the insurance company, had the independent authority to initiate the prosecution. *Id.* at 384.

As in *Matthews*, defendants did not initiate or maintain any prosecution against plaintiff Dr. Laney. Instead, the proceedings against plaintiff Dr. Laney were initiated by Prosecutor Kaiser based on the investigation conducted by FBI Agent Nina Burnett, defendants, and the Warren Police Department. The uncontested facts fail to demonstrate that defendants initiated a criminal proceeding against plaintiff Dr. Laney. Defendants merely provided information to Prosecutor Kaiser to support that there were potential wrongdoings by plaintiff Dr. Laney. It was Prosecutor Kaiser that had the authority and the discretion to initiate and maintain the prosecution against plaintiff Dr. Laney. Despite the fact that the warrant may not have been issued without the information provided by defendants the prosecution was initiated based on an independent exercise of prosecutorial discretion. *Matthews, supra*, 465 Mich 386. The prosecutor's exercise of his independent discretion in initiating and maintaining a prosecution is generally a complete defense to an action for malicious prosecution. *Matthews, supra*, 465 Mich 384. Thus, plaintiffs have not established a claim for malicious prosecution because they have not (and cannot) prove that defendants initiated, instituted, or maintained prosecution against plaintiff Dr. Laney.

Plaintiff also contends that dismissal of the criminal charges at the preliminary examination stage proved that probable cause was lacking. This claim is without merit. With regard to a malicious prosecution action against a private person, a prima facie case requires proof that the person instituted or maintained the prosecution, and "that the prosecutor acted on the basis of information submitted by the private person that did not constitute probable cause." *Id.* at 379. The element of probable cause refers to whether the defendant had probable cause to believe that the plaintiff had committed a crime. *Id.* However, probable cause does not depend on actual guilt and there may be probable cause to believe a person is guilty of a crime when he was actually innocent. Thus, the fact that the criminal proceedings were ultimately terminated in the plaintiff's favor does not mean that probable cause for initiating the proceedings was lacking. *Drobzyk v Great Lakes Steel Corp*, 367 Mich 318, 322-323; 116 NW2d 736 (1962). There was no evidence introduced establishing that defendants initiated or maintained the prosecution, or that the prosecutor acted solely on the basis of information supplied by defendants. As we held, *supra*, there was probable cause for the prosecution of plaintiff Dr. Laney. It was reasonable to conclude that plaintiff Dr. Laney had engaged in a conspiracy and filed a false claim based on the investigation by defendant Cedras and the FBI. Accordingly, a prima facie case of malicious prosecution was not presented.

Furthermore, plaintiff Dr. Laney's affidavit did not constitute sufficient independent evidence of a factual dispute on the requisite elements of his malicious prosecution claim. *Matthews, supra*, 456 Mich 377-378. "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Plaintiff Dr. Laney did assert that defendants withheld exculpatory evidence from the prosecution, namely, that plaintiff Dr. Laney used a third party biller in submitting the false claim. "Failure to include all exculpatory facts is not adequate to sustain a suit for malicious prosecution." *Payton v Detroit*, 211 Mich App 375, 395; 536 NW2d 233 (1995). What is required is evidence that would give rise to the inference that the defendant knowingly included false facts in his affidavit, without which the prosecutor could not have concluded there was probable cause. *Matthews, supra*, 456 Mich 390; *Payton, supra*, 211 Mich App 395. Plaintiff has not presented any evidence that defendants believed the information that was turned over to the prosecution was false, and there was no evidence that defendants initiated or maintained a criminal prosecution against plaintiff. There was absolutely no evidence of malice presented beyond plaintiff Dr. Laney's contention that defendant Cedras was possibly seeking a promotion. Plaintiffs' assertion that defendants failed to include all exculpatory facts is not adequate to sustain a suit for malicious prosecution. *Payton, supra*, 211 Mich App 395. Plaintiffs offered no evidence that would give rise to the inference that defendants knowingly included false facts involving information without which the prosecutor could not have concluded there was probable cause.

There was no evidence to indicate that defendant Blue Cross (or any of its employees), initiated the prosecution. Additionally, as we held, *supra*, the record reveals that there was probable cause to prosecute plaintiff Dr. Laney. Furthermore, the *Matthews* case, decided by the Michigan Supreme Court, is dispositive of this malicious prosecution claim. *Matthews, supra*. Consequently, the trial court properly granted summary disposition on the malicious prosecution claim. *Matthews, supra*, 456 Mich 378; *Cox v Williams*, 233 Mich App 388, 391; 593 NW2d 173 (1999).

Plaintiffs' final issue on appeal is that the trial court erred when it dismissed the balance of plaintiffs' claims without addressing the merits of each claim, which included defamation/slander, retaliation, interference with a contractual relationship, negligent misrepresentation, intentional infliction of emotional distress, and loss of consortium. We disagree.

Plaintiffs argue on appeal that summary disposition was not proper on the defamation/slander claim, and that the court failed to address the claim. A communication is defamatory if, under all of the circumstances, it tends to so harm the reputation of an individual that it lowers the individual's reputation in the community or it deters others from associating or dealing with the individual. *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000). In order to establish a claim of defamation, a plaintiff must show: (1) a false or defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm for defamation per se, or the existence of special harm caused by publication for defamation per quod. *Kefgen, supra*, 241 Mich App 617. At common law, words charging the commission of a crime are considered defamatory per se and the injury to the

defamed person's reputation is presumed. *Burden v Elias Big Boy Restaurants*, 240 Mich App 723, 727-728, 613 NW2d 378 (2000).

Several of the alleged defamatory statements were made during the course of judicial proceedings. "Statements made during the course of judicial proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried." *Maiden, supra*, 461 Mich 133-134. Falsity or malice on the part of the witness does not abrogate the privilege. *Maiden, supra*, 461 Mich 134. This immunity extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue including pleadings and affidavits. *Couch v Schultz*, 193 Mich App 292, 295; 483 NW2d 684 (1992). Thus, the statements made in the course of the proceedings in the courtroom, as well as statements made in connection with executing the warrant, are absolutely privileged.

Plaintiffs, in their brief on appeal, admit that statements made during courtroom proceedings are entitled to immunity, but argue that statements were made in the hallways of the courthouse with third parties in earshot, that were not privileged. Plaintiff Dr. Laney testified that third parties heard these statements in the hallway, but could not give any particular names of individuals who heard these comments. The defamation "elements must be specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991). This Court has noted that allegations made regarding defamatory statements, which do not state to whom publication was made and do not state the substance of the defamatory statement are deficient. *Gonyea, supra*, 192 Mich App 77-78. However, this Court has recognized that "because a slanderous statement cannot be retained verbatim in many instances since it is spoken, . . . it is sufficient if the complaint sets out the substance of the alleged slander and it is not necessary to recite the exact words used." *Pursell v Wolverine-Petronix, Inc*, 44 Mich App 416, 422; 205 NW2d 504 (1973). There were no specific allegations as to what was said in the hallways of the courthouse or as to who heard these statements. This exception to the rule does not alleviate the requirement of alleging to whom the publication was made and at least alleging the substance of the statement.

Any of the alleged defamatory statements that were made during the course of the judicial proceedings, including in court statements and statements made in the execution of the warrant, are protected by an absolute privilege. Therefore, any slander/defamation claim regarding any of these statements was properly summarily dismissed. With regard to the allegation that statements were made outside the courtroom, the allegations lacks the specificity of to whom the statements were published and what the statements were, thus, making the allegation deficient. Plaintiffs have failed to set forth any evidence showing that there is a genuine issue for trial regarding the slander/defamation claim. Therefore, the trial court did not err in granting summary disposition with respect to plaintiff's claim of slander/defamation.

Plaintiffs next alleges that defendant Cedras interfered with plaintiff Dr. Laney's participation program agreement with defendant Blue Cross and caused him to be placed on Prepayment Utilization Review (PPUR). The elements of tortious interference with contractual relations are "(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by defendant." *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). The arguments on appeal tend to focus on the second and third elements.

Defendants contend that there was no breach of the participation agreement, which is an element of tortious interference with a contractual relationship. It does not appear that there was a breach of contract in placing plaintiff Dr. Laney on PPUR, but plaintiffs allege that the contract was breached because plaintiff Dr. Laney submitted fifty claims that were not paid, which raises a question of breach. Regardless of whether there was a breach of contract, plaintiffs have not demonstrated that there was an unjustified instigation of breach by defendant Cedras.

This Court stated, in regard to the third element, that one who alleges tortious interference with a contractual relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice that is unjustified in law for the purpose of invading the contractual rights of another. *Woods v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990). A person is not liable for tortious interference with a contract if legitimate personal or business interests motivate him or her. *Wood, supra*, 186 Mich App 500. The defendant's motivation is one of several factors to be weighed in assessing the propriety of the defendant's actions along with the following other factors: (1) the nature of the defendant's conduct; (2) the nature of the plaintiff's contractual interest; (3) the social utility of the parties' respective interests; and (4) the proximity of the defendant's conduct with the interference. *Id.*

Even if there was a breach of contract, plaintiffs are unable to demonstrate that there was an unjustified instigation of the breach by defendant Cedras. Defendant Cedras requested that plaintiff Dr. Laney be placed on PPUR status. Pursuant to our analysis, *supra*, there was probable cause to issue an arrest warrant for plaintiff Dr. Laney. There was evidence that plaintiff Dr. Laney could potentially have been involved in a health care fraud conspiracy and there was evidence that he submitted a bill for a service he did not render. Plaintiff Dr. Laney, apparently, argues that defendant Cedras was trying to further his own interest in hopes of getting a promotion, which provided a motive to instigate a breach of contract between defendant Blue Cross and plaintiff Dr. Laney. Plaintiff Dr. Laney has provided no support for this broad conclusion. There is no evidence that defendant Cedras would gain anything by causing defendant Blue Cross to breach a contractual agreement with plaintiff Dr. Laney. The information derived from the investigation of plaintiff Dr. Laney, and the fact that a claim was filed for services that were not rendered by plaintiff Dr. Laney is evidence that placing plaintiff Dr. Laney on PPUR status was a legitimate business interest of defendant Blue Cross. Accordingly, plaintiff's claim for tortious interference with contractual relations was properly dismissed for there is no genuine issue of material fact.

Plaintiff Dr. Laney further alleges that defendant Blue Cross' conduct amounted to an intentional infliction of emotional distress.<sup>2</sup> In order to establish a valid claim of intentional infliction of emotional distress, a plaintiff must show: "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). The *Graham* Court further stated:

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<sup>2</sup> Note that the Michigan Supreme Court has never specifically recognized or adopted the tort of intentional infliction of emotional distress. *Smith v Calvary Christian Church*, 462 Mich 679, 686 n 7; 614 NW2d 590 (2000). However, panels of this Court have recognized claims of intentional infliction of emotional distress. *Clarke, supra*, 197 Mich App 548.

Liability for the intentional infliction of emotional distress has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Id.* It is not enough that the defendant has acted with an intent that is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by “malice,” or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985), quoting Restatement of Torts, 2d, § 46, comment d, pp 72-73. In reviewing a claim of intentional infliction of emotional distress, we must determine whether the defendant’s conduct is sufficiently unreasonable as to be regarded as extreme and outrageous. *Doe, supra*[, 212 Mich App 92]. The test is whether “the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to claim, ‘Outrageous!’” *Roberts, supra*[, 422 Mich] 603. [*Graham, supra*, 237 Mich App 674-675.]

Plaintiffs argue that defendants’ conduct was extreme and outrageous in that criminal proceedings were initiated against plaintiff Dr. Laney and because there was an unwarranted compilation of evidence against plaintiff Dr. Laney. Plaintiffs further argued that this unwarranted compilation of evidence presented a question of fact. Initially, as a matter of law, the court must determine if a defendant’s conduct could be reasonably regarded as extreme and outrageous. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). If reasonable minds could differ, then a jury must determine if the conduct was extreme according to the particular facts of the case. *Teadt, supra*, 237 Mich App 582.

This Court has rejected a plaintiffs' claim for intentional infliction of emotional distress where the defendant's employee merely filed a complaint with police against the plaintiffs. *Hall, supra*, 153 Mich App 616-617. In *Hall, supra*, the panel found no evidence of intent to cause the plaintiffs to suffer the requisite emotional distress where the defendant's employee did no more than file a complaint with law enforcement officials. *Id.* at 617. Moreover, in a plurality decision of the Michigan Supreme Court, Justice Levin stated, "the mistake in identifying [plaintiff] Adams as the culprit was [not] 'outrageous' . . ." enough to maintain an intentional infliction of emotional distress action. *Adams v National Bank of Detroit*, 444 Mich 329, 333 n 4; 508 NW2d 464 (1993) (plurality opinion).<sup>3</sup>

After viewing the claim in a light most favorable to plaintiffs, we do not believe that a trier of fact could conclude that defendant Blue Cross’ conduct rose to an extreme or "outrageous" level. The trial court properly granted defendants’ motion for summary disposition with regard to plaintiffs’ claim for intentional infliction of emotional distress. Plaintiff makes

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<sup>3</sup> We note that "a plurality decision in which no majority of the participating justices agree concerning the reasoning is not binding authority under the doctrine of stare decisis." *Burns, supra*, 212 Mich App 582.

nothing more than unsubstantiated allegations that there was an unwarranted compilation of evidence, and that, in light the dismissal of charges and minimal evidence, this is considered outrageous conduct. As we held, *supra*, there was probable cause to suspect plaintiff Dr. Laney of criminal activity, and thus, defendant Blue Cross' actions in conducting an investigation were not extreme or outrageous. Furthermore, plaintiffs offered no evidence which shows that, in effectuating its investigation, it was defendant Blue Cross' intent to cause plaintiff Dr. Laney the requisite emotional distress. Accordingly, the trial court properly granted summary disposition in favor of defendants in regard to plaintiffs' claim for intentional infliction of emotional distress.

Plaintiffs argue that the trial court erred in dismissing their retaliation, negligent misrepresentation, and loss of consortium claims. However, plaintiffs cite no case law or other authority for this argument. Therefore, the issues are abandoned. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). "A party may not leave it to this Court to search for authority to sustain or reject its position." *Magee, supra*, 218 Mich App 161. A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); see also *Manning v City of East Tawas*, 234 Mich App 244, 247 n 2; 593 NW2d 692 (1999), citing *Goolsby, supra*. Accordingly, the issue of whether the retaliation, negligent misrepresentations, and loss of consortium<sup>4</sup> claims should be dismissed is abandoned.

The trial court properly granted summary disposition in favor of defendants on plaintiffs' claims for defamation/slander, interference with a contractual relationship, and intentional infliction of emotional distress. Plaintiffs' claims of retaliation, negligent misrepresentation, and loss of consortium have been abandoned.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kathleen Jansen  
/s/ Michael J. Talbot

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<sup>4</sup> Additionally, in *Long v Chelsea Community Hosp*, 219 Mich App 578, 589; 557 NW2d 157 (1996), this Court held that a "derivative claim for loss of consortium stands or falls with the primary claims in the complaint. Because plaintiffs' other claims failed, the loss of consortium claim must likewise fail." *Long, supra*, 219 Mich App 589. In the instant case, plaintiff Kim Laney's claim for loss of consortium must fail in all respects.